

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SANTA FE COMMUNITY COLLEGE,

Plaintiff/Counter-Defendant,

vs.

Civ. No. 20-1151 SCY/KK

ZTARK BROADBAND, LLC, a cancelled
California Limited Liability Company,

Defendant/Counter-Plaintiff.


ORDER GRANTING MOTION TO AMEND

This matter comes before the Court on Defendant Ztark Broadband LLC's ("Ztark") Motion to Amend its Answer to Add Affirmative Defense, filed July 9, 2021 (Doc. 67) and fully briefed August 4, 2021 (Docs. 75, 81). Ztark seeks to amend its answer to add an affirmative defense that Santa Fe Community College's ("SFCC") claims are barred by the applicable statute of limitations. Pursuant to 28 U.S.C. § 636(c), the parties consented to the undersigned to conduct any or all proceedings and to enter an order of judgment. Docs. 11, 12, 13.

Under Federal Rule of Civil Procedure 15(a)(2), once the time for amending a pleading as a matter of course has expired, a party may only amend a pleading "with the opposing party's written consent, or the court's leave." "The court should freely give leave when justice so requires." *Id.* However, if the deadline established by the court for amendments has passed, the movant must also establish good cause under Rule 16(b)(4) to amend the scheduling order. Fed. R. Civ. P. 16(b)(4) (a scheduling order may be modified "only for good cause and with the judge's consent."); *see also Gorsuch Ltd., B.C. v. Wells Fargo Nat. Bank Ass'n*, 771 F.3d 1230, 1240-41 (10th Cir. 2014).

Ztark explains that it simply overlooked including the defense in its answers, but that once SFCC pointed out that deficiency when briefing summary judgment, Ztark promptly moved to amend its answer. Ztark also points out that it has provided notice of the statute of limitations defense to SFCC by at least March 18, 2021 (which, coincidentally is the same day it filed its answer to the amended complaint in which it could have included the statute of limitations defense). *See* Doc. 67 at 17. The Court finds this explanation provides good cause to allow the late amendment. Further, the Court finds no prejudice to SFCC. As demonstrated by the substantial summary judgment briefing in this case, the parties are aware of the facts and history related to the lease agreements. Neither party alleges that further discovery is needed on the statute of limitations defense and so its inclusion in Ztark's answer will not unduly prejudice SFCC.

For these reasons, the Court GRANTS Ztark's Motion to Amend its Answer to Add Affirmative Defense (Doc 67). Within 7 days of the entry of this Order, Ztark shall file its amended answer on the docket.


STEVEN C. YARBROUGH
United States Magistrate Judge
Presiding by consent